

Message Text

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ACTION NEA-10

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FM AMEMBASSY TUNIS
TO SECSTATE WASHDC IMMEDIATE 2253
INFO AMEMBASSY ALGIERS
AMEMBASSY BRUSSELS
AMEMBASSY PARIS
AMEMBASSY RABAT
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C O N F I D E N T I A L TUNIS 5952

BRUSSELS FOR USEC/LABATT

PARIS FOR LABATT

E.O.11652: GDS
TAGS: PINR ELAB TS
SUBJ: SOUSSE TRAIL--CONVERSATION WITH WEST
GERMAN AMBASSADOR

REF: TUNIS 5894

1. ON AUGUST 23 I HAD A DISCUSSION IN DETAIL WITH WEST
GERMAN AMBASSADOR TERFLOTH ON THE IMPLICATIONS OF RECENT
DEVELOPMENTS IN THE TRAIL OF TUNISIAN TRADE UNION OFFICIALS.
TERFLOTH, WHO IMPRESSES ME AS BEING AS WELL INFORMED ON
THIS ISSUE AS ANY OUTSIDE OBSERVER, BELIEVES DECISION OF
SOUSSE COURT PRESIDENT TO DECLARE COURT INCOMPETENT
CAME AS TOTAL SURPRISE TO GOT AND PRESENTS GOVERNMENT
WITH A VERY SERIOUS DILEMMA.

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2. WEST GERMAN AMBASSADOR SAID HE HAD HAD OPPORTUNITY
TO DISCUSS LATEST DEVELOPMENTS IN TRIAL OF TRADE
UNIONISTS WITH ALL OTHER WEST EUROPEAN AMBASSADORS IN
TUNIS AND OPINION WAS UNANIMOUS THAT PRESIDENT OF
SOUSSE COURT ACTED INDEPENDENTLY IN DECLARING COURT'S
INCOMPETENCE ON GROUNDS THAT CASE WAS STATE SECURITY

MATTER. TUNISIAN GOVERNMENT CAN, AND IN THE PAST HAS, PUT PRESSURE ON COURTS; BUT BASICALLY TUNISIAN JUDICIAL SYSTEM HAS CONSIDERABLE INTEGRITY, AND THERE ARE VERY STRICT LIMITS ON HOW FAR GOT CAN INFLUENCE COURT DECISIONS. IN THIS PARTICULAR CASE IT APPARENT FROM TRANSCRIPTS OF PROCEEDINGS THAT PRESIDING JUDGE SKEPTICAL GOVERNMENT HAD A CASE. ON OTHER HAND JUDGE ALSO AWARE OF IMPORTANT POLITICAL IMPLICATIONS OF COURT'S DECISION ON UPCOMING TRIAL OF FORMER UGTT LEADER HABIB ACHOUR. TERFLOTH SAID THAT HE UNDERSTOOD ON "VERY GOOD AUTHORITY" THAT SOUSSE TRIAL JUDGE RESOLVED HIS DILEMMA BY PRESENTING IT TO HIS FELLOW JUSTICES AT THE RECENT MEETING OF THE FEDERATION OF TUNISIAN MAGISTRATES. JUDGE WAS TOLD BY HIS COLLEAGUES THAT THEY APPRECIATED THE DIFFICULTY IN AN ACQUITTAL BUT IF HE WERE TO COMPROMISE BY DECLARING HIS COURT INCOMPETENT THEY WOULD STAND SOLIDLY BEHIND HIM. WITH THAT KIND OF BACKING JUDGE TOOK PRECISELY THAT COURSE.

3. AS A RESULT GOT WAS THROWN INTO CONVUSION. ON THE DAY BEFORE THE MINISTRY OF JUSTICE APPEALED THE CASE TO THE COURT OF CASSATION (SUPREME COURT), TERFLOTH HAD A CONVERSATION WITH MINISTER OF INTERIOR HANNABLIA WHO HAD LEFT WITH HIM THE CLEAR IMPRESSION THAT THE GOVERNMENT WOULD MOVE THE CASE DIRECTLY FROM THE SOUSSE COURT TO THE STATE SECURITY COURT. ON THE SAME DAY THE CONFIDENTIAL

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BELGIONA AMBASSADOR RECEIVED EXACTLY THE SAME IMPRESSION IN A DISCUSSION WITH MINISTER OF JUSTICE BALY. OBVIOUSLY, THE GOVERNMENT CHANGED ITS MIND SUDDENLY BUT WHY REMAINS A MYSTERY.

4. THE MOST LOGICAL ASSUMPTION, ACCORDING TO TERFLOTH, IS THAT THE GOVERNMENT WILL TRY TO GET A RULING FROM THE COURT OF CASSATION (SUPREME COURT) THAT THE SOUSSE COURT IS COMPETENT, AND THEN NEW JUDGES CAN BE APPOINTED. HOWEVER, IF A RECONSTITUTED COURT HANDED OUT HEAVY PRISON SENTENCES THERE WOULD BE AN "UPROAR" IN TUNISIA. ALSO, IF THIS IS WHAT THE GOVERNMENT WANTS WHY HAVE THEY RECENTLY APPOINTED NEW MEMBERS TO THE STATE SECURITY COURT? HERE THE ONLY ASSUMPTION CAN BE THAT THE GOT WILL NOT DROP PROSECUTION, AND IF THEY CANNOT GET THE CASE BACK INTO THE CIVIL COURTS THEY WILL PROCEED TO THE STATE SECURITY COURT. IN THIS REGARD THE IMPORTANCE OF PROSECUTING OR NOT PROSECUTING IS NOT SO MUCH WITH THE SOUSSE CASE AS IT IS AS A PRECEDENT IN THE ACHOUR CASE. A TRIAL OF ACHOUR BY THE STATE SECURITY COURT WOULD PROVOKE FAR MORE OF AN INTERNATIONAL OUTCRY THAN A TRIAL BEFORE A CIVIL COURT.

5. THE GOVERNMENT'S DILEMMA GOES BACK TO JANUARY 26. EVER SINCE ACHOUR AND THE TRADE UNION LEADERSHIP WERE JAILED THE QUESTION HAS BEEN HOW TO GET THEM OUT. AT THIS POINT THINGS HAVE GOTTEN INTO SUCH A MESS THAT THE QUESTION MAY BE HOW TO GET THEM CONVICTED SO THAT THEY CAN BE PARDONED. ONE LAST POSSIBILITY IS FOR PRESIDENT BOURGUIBA UPON HIS RETURN TO GRANT ALL DEFENDENTS AN AMNESTY, WHICH IS QUITE DISTINCT UNDER TUNISIAN LAW FROM A PARDON AFTER CONVICTION AND IS SIMPLY AN ORDER BY THE PRESIDENT TO THE PUBLIC PROSECUTOR TO CEASE PROSECUTION. NO ONE KNOWS WHETHER BOURGUIBA WOULD AGREE TO DO SUCH A THING, BUT IF HE DID IT WOULD BE A SEVERE BLOW TO NOUIRA'S PRESTIGE. THE GOVERNMENT, IN
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SUM, HAS NO EASY WAY OUT.

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